

IN THE DISTRICT COURT FOR SOUTHERN DISTRICT OF IOWA

HOMELAND ENERGY SOLUTIONS,)
LLC, an Iowa limited liability company,)

Case No.

Plaintiff,)

v.)

NOTICE OF REMOVAL

STEVEN J. RETTERATH,)

Defendant.)

Pursuant to 28 U.S.C. §§1441 and 1446, Defendant Steve Retterath, hereby files this Notice of Removal from the District Court of Polk County, Iowa, to the United States District Court for the Southern District of Iowa. In support of his notice of removal Defendant alleges as follows:

NATURE OF THE CASE

1. The removed case is a civil action, initially filed on August 14, 2013, by the Plaintiff Homeland Energy Solutions, LLC. ("Homeland") in the District Court of Polk County, Iowa, styled *Homeland Energy Solutions, LLC, an Iowa Limited Liability Company v. Steven J. Retterath*, Case No. EQCE 074886.

2. Homeland's Complaint asserts a claim against Retterath for specific performance of an alleged agreement for the purchase of federally registered securities. (Complaint ¶ 7).

3. Homeland requests a "judgment in favor of [Homeland] and against [Mr. Retterath]... requiring [him] to specifically perform his obligations under the Agreement,

enjoining him and/or his appointed Board members from participating on the Board pending Retterath's specific performance..." *Id.* at "WHEREFORE" clause following ¶16.

4. As required by 28 U.S.C. § 1446(a), attached as Exhibit "A", is a copy of all process, pleadings, and orders served upon Mr. Retterath in this action.

BASIS FOR FEDERAL JURISDICTION

5. This Court has exclusive subject matter jurisdiction in cases involving the Securities and Exchange Act of 1934. 15 U.S.C. §78aa; Procedure for Removal—Time for Seeking Removal, 14C Fed. Prac. & Proc. *Juris.* § 3731 (4th ed.), citing *Barefield v. State Farm and Cas. Co.*, 296 F. Supp. 2d 741 (S.D. Texas 2003).

6. This Court has jurisdiction over this removed action pursuant to 28 U.S.C. § 1441 because it originally could have been filed in this Court under section 10(b) of the Securities and Exchange Act, 15 U.S.C. §78j(b) and Rule 10b-5a, 17 C.F.R. § 240.10b-5(a) which gives federal courts exclusive jurisdiction over suits alleging securities violations.

7. Homeland's complaint is pled in a manner that artfully omits the federal nature of its complaint. The underlying contract for which performance is sought was for the repurchase by Homeland of SEC registered securities, the contract is subject to 10(b) and 14(a) of the Securities and Exchange Act, 15 U.S.C. §78j(b) and Rule 10b-5a, 17 C.F.R. § 240.10b-5(a) and also to 15. U.S.C. §78aa which gives exclusive jurisdiction for violations of the Security and Exchange Act to the United States District Courts.

8. Furthermore, the Plaintiff's complaint necessarily involves a federal question that arises under the laws of the United States. The Plaintiff's are asking a court to make a determination to whether or not the underlying contract was valid not only under state law, but

federal law. It is apparent that they have artfully pled their breach of contract claim to avoid federal jurisdiction.

9. Plaintiff issued a proxy statement on November 29, 2013. The proxy statement called a special meeting of Homeland members which took place on December 19, 2013. As a result the nature of the Plaintiff's complaint has been changed.

VENUE IS PROPER

10. The United States District Court for the Southern District of Iowa is the proper venue for removal under 28 U.S.C. § 1441(a) because the United States District Court for the Southern District of Iowa, encompasses Polk County, Iowa, where the original action was filed.¹

FILING OF REMOVAL PAPERS

11. Pursuant to 28 U.S.C. § 1446(d), written notice of this removal has been provided simultaneously to the Plaintiff and the District Court of Polk County, Iowa.

WHEREFORE, defendant respectfully requests that the above-styled action be removed from the Iowa District Court for Polk County to the Southern District of Iowa.

DATED this 30 day of December, 2013.

STEVEN J. RETTERATH, Defendant,

By: /s/ Sean A Minahan
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ATTORNEY FOR DEFENDANT

¹ The proper venue for this action is the District Court for the Southern District of Florida, where a similar action is currently pending.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 30th day of December, 2013, I electronically filed the forgoing with the Clerk of the Court by using the Iowa Electronic Document Management System which will send a notice of electronic filing to the following individuals. Per rule 16.317(1)(a), this constitutes service of the foregoing document for purposes of the Iowa Court Rules.

Michael A. Dee
Jonathan M. Gallagher
Brown, Winick, Graves, Gross, Baskerville and Schoenebaum, P.C.
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/s/ Sean A Minahan
Sean A. Minahan

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